APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 04-4219

RICHARD TOMIC,
Plaintiff-Appellant,

v.

CATHOLIC DIOCESE OF PEORIA,
Defendant-Appellee.

Appeal from the United States District Court
for the Central District of Illinois.
No. 04 C 1184—Michael M. Mihm, *Judge.*

ARGUED DECEMBER 5, 2005—DECIDED APRIL 4, 2006

Before POSNER, KANNE, and SYKES, *Circuit Judges.*

POSNER, *Circuit Judge.* This age-discrimination suit by the former music director and organist of a Catholic diocese, dismissed on a motion to dismiss, requires us to consider the scope of the rule that federal courts may not exercise jurisdiction over the internal affairs of religious associations.

Richard Tomic was employed as the music director and organist both of a Roman Catholic church in Peoria (St. Mary's Cathedral) and of the Peoria diocese itself. The job description for the diocesan position required him "to assist the Office of Divine Worship in preparing and celebrating various diocesan liturgies" and "in planning and celebrating liturgical events as requested." The description of his church job required him to play the organ for masses and other events, including weddings and funerals, and, in his

capacity as music director, to "prepare music for all Parish masses and liturgies ... in consultation with the Rector/Pastor where necessary," as well as to recruit, train, direct, and rehearse the members of the chorus.

A dispute with the bishop's assistant concerning the scheduling of Easter music culminated in Tomic's dismissal from both positions; he was 50 years old and was replaced by a much younger person. The diocesan employment handbook describes the diocese as "an Equal Opportunity Employer" that does not discriminate on account of race, sex, etc.—including age—with certain exceptions (such as that employees "shall conform to the moral standards of the Catholic faith") that are not claimed to be applicable to Tomic. In dismissing the suit, the district judge did not explore the dispute between Tomic and the bishop's assistant or decide whether age had played any role in Tomic's dismissal.

Federal courts are secular agencies. They therefore do not exercise jurisdiction over the internal affairs of religious organizations. E.g., *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10, 713-15 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449-50 (1969); *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 427-28 (2d Cir. 2002); *Dixon v. Edwards*, 290 F.3d 699, 714-15 (4th Cir. 2002); Note, "Judicial Intervention in Disputes over the Use of Church Property," 75 *Harv. L. Rev.* 1142 (1962). When Article III of the Constitution created the federal judicial power, England had, as part of its established church, ecclesiastical courts (with curious names, such as the "Court of Arches" and the "Court of Peculiars"). 3 William Blackstone, *Commentaries on the Laws of England*, ch. 5 (1768). Since the United States was not to have a national church, the federal judicial power was not envisaged as extending to the resolution of ecclesiastical controversies. In contrasting our situation with that of England, the Supreme Court remarked:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-29 (1871); see also Note, *supra*, at 1155-56.

A suit to remove a priest on the ground that he is a heretic, or to reinstate a parishioner who has been excommunicated, thus has never been justiciable in the federal courts. E.g., *Serbian Eastern Orthodox Diocese v. Milivojevich*, *supra*, 426 U.S. at 698; *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40 (1872); cf. *Montano v. Hedgepeth*, 120 F.3d 844, 850-51 (8th Cir. 1997). Even if the suit does not involve an issue of religious doctrine, but concerns merely the governance structure of the church, the courts will not

assume jurisdiction if doing so would interfere with the church's management. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994); *Combs v. Central Texas Annual Conference of United Methodist Church*, 173 F.3d 343, 350 (5th Cir. 1999); *EEOC v. Catholic University of America*, 83 F.3d 455, 462-63 (D.C. Cir. 1996). These cases "affirm the fundamental right of churches to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.' " *Id.* at 462, citing *Kedroff*; see also *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299, 1304 (11th Cir. 2000). Also pertinent is *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). The issue in that case was whether the National Labor Relations Act applied to lay teachers in Catholic schools. The Court held not, because "the resolution of [unfair labor] charges by the [National Labor Relations Board], in many instances, will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission. It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *Id.* at 502.

Thus "the First Amendment concerns [with assuming jurisdiction in ecclesiastical cases] are two-fold. The first concern is that secular authorities would be involved in evaluating or interpreting religious doctrine. The second quite independent concern is that in investigating employment discrimination claims by ministers against their church, secular authorities would necessarily intrude into church governance in a manner that would be inherently coercive, even if the alleged discrimination were purely non-doctrinal." *Combs v. Central Texas Annual Conference of United Methodist Church, supra*, 173 F.3d at 350 (citations omitted). This second aspect of the internal-affairs doctrine is called the "ministerial exception" to the exercise of federal

jurisdiction. E.g., *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698, 702-03 (7th Cir. 2003).

Both aspects govern decision even when—in fact most commonly when—the complaint is not based on and does not refer to religious doctrine or church management (as in most Title VII and other employment-discrimination suits) but it is apparent that a controversy over either may erupt in the course of adjudication. E.g., *id.*; *EEOC v. Roman Catholic Diocese of Raleigh*, 213 F.3d 795, 801 (4th Cir. 2000).

The ministerial exception, and the hands-off approach more generally, do not place the internal affairs of religious organizations wholly beyond secular jurisdiction. If a local congregation of a hierarchical sect seized the local church, changed the locks, and declared itself an independent religious organization, a court would, upon suit by the hierarchy, enjoin the seizure. *Jones v. Wolf*, *supra*, 443 U.S. at 602-03; *Watson v. Jones*, *supra*, 80 U.S. (13 Wall.) at 726-29; *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 367-68 (1970) (per curiam); *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 525-26 (8th Cir. 1995); cf. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, *supra*, 393 U.S. at 449-50. Or if to avoid having to pay the minimum wage to its janitor a church designated all its employees "ministers," the court would treat the designation as a subterfuge, see *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389, 1396-97 (4th Cir. 1990); cf. *EEOC v. Roman Catholic Diocese of Raleigh*, *supra*, 213 F.3d at 801; *Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 947 (9th Cir. 1999), just as the Internal Revenue Service denies tax exemptions to religious associations that are not bona fide. *Living Faith, Inc. v. Commissioner*, 950 F.2d 365, 372-73 (7th Cir. 1991); *United States v. Jeffries*, 854 F.2d 254, 257 (7th Cir. 1988); *Spiritual Outreach Society v. Commissioner*, 927 F.2d 335, 339 (8th Cir. 1991).

These examples show that federal courts cannot always avoid taking a stand on a religious question. In the seizure

case, there might be a dispute over whether, under the internal law of the sect in question, local church property was owned by the congregation or by the sect. The court would have to answer the question in order to determine whether to issue the injunction; and though the tendency of the courts is simply to accept whatever answer the highest church authority gives to the question of ownership, at a minimum the court must determine what is that highest authority. In the janitor's case, the court would have to determine whether under the actual law of the church in question (and not as a subterfuge) janitors really were ministers. The internal-affairs exception is limited in other ways as well. A church could not subject its clergy to corporal punishment or require them to commit criminal acts. E.g., *Employment Division v. Smith*, 494 U.S. 872 (1990); *United States v. Indianapolis Baptist Temple*, 224 F.3d 627, 629 (7th Cir. 2000). But it would not be constrained in its dealings with them by employment laws that would interfere with the church's internal management, including antidiscrimination laws. E.g., *Alicea-Hernandez v. Catholic Bishop of Chicago*, *supra*, 320 F.3d at 702-04 (Title VII); *EEOC v. Roman Catholic Diocese of Raleigh*, *supra*, 213 F.3d at 800-01 (ditto); *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1356-57 (D.C. Cir. 1990) (ADEA).

It might seem that unless a church had a doctrine placing limitations of age, race, ethnic origin, disability, or sex on ministers, the application of laws forbidding employment discrimination would not involve the court in theological controversy. But this is not correct, because the church would be likely to defend its employment action on grounds related to church needs rooted in church doctrine. See *Scharon v. St. Luke's Episcopal Presbyterian Hospitals*, 929 F.2d 360, 363 (8th Cir. 1991). The reference in the complaint in this case to the dispute between Tomic and the bishop's assistant suggests that if the suit were permitted to go forward, the diocese would argue that he was dismissed for a religious reason—his opinion concerning the suitability of particular music for Easter services—and the argument could propel

the court into a controversy, quintessentially religious, over what is suitable music for Easter services. Tomic would argue that the church's criticism of his musical choices was a pretext for firing him, that the real reason was his age. The church would rebut with evidence of what the liturgically proper music is for an Easter Mass and Tomic might in turn dispute the church's claim. The court would be asked to resolve a theological dispute. *DeMarco v. Holy Cross High School*, 4 F.3d 166, 171 (2d Cir. 1993).

This assumes, however, that as organist and music director, Tomic, unlike the janitor of St. Mary's Cathedral, really did have religious duties. See *id.* at 171-72. So far as his role as organist is concerned, his lawyer says that all Tomic did was play music. But there is no one way to play music. If Tomic played the organ with a rock and roll beat, or played excerpts from *Jesus Christ Superstar*, at an Easter Mass he would be altering the religious experience of the parishioners. Among his duties as music director was that of selecting the music to be played at the various masses. That duty required him to make a discretionary religious judgment because the Catholic Church does not have rules specifying what piece of music is to be played at each type of mass. Raymond F. Glover, "Liturgical Music: Its Forms and Functions," in *Liturgy and Music: Lifetime Learning* 231, 247-48 (Robin A. Leaver & Joyce Ann Zimmerman, eds. 1998).

At argument Tomic's lawyer astonished us by arguing that music has in itself no religious significance—its only religious significance is in its words. The implication is that it is a matter of indifference to the Church and its flock whether the words of the Gospel are set to Handel's *Messiah* or to "Three Blind Mice." That obviously is false. The religious music played at a wedding is not necessarily suitable for a funeral; and religious music written for Christmas is not necessarily suitable for Easter. Even Mozart had to struggle over what was suitable church music with his first patron, Archbishop Colloredo, whom the Mozart family called the "arch-booby." "[M]usic is a vital means of express-

ing and celebrating those beliefs which a religious community holds most sacred. Music is an integral part of many different religious traditions," including the Catholic tradition. *EEOC v. Roman Catholic Diocese of Raleigh*, *supra*, 213 F.3d 795, 802-03; see also *Starkman v. Evans*, 198 F.3d 173, 176-77 (5th Cir. 1999). Like the plaintiff in the *Starkman* case, Tomic "performed tasks that were 'traditionally ecclesiastical or religious.'" *Id.* at 177.

The rector or bishop could override Tomic's choices of what music to play. But it is easy to see how disagreement with his choices could convince the ecclesiastical authorities that they would be better off with someone else in the job. If as in this case the music director is at least 40 years old and therefore within the class protected by the Age Discrimination in Employment Act, the ability of the church and the diocese to remove him will be inhibited unless the ministerial exception is applicable. Since, as we have just seen, Tomic's duties, unlike those, say, of the person who tunes the organ in St. Mary's Cathedral, had a significant religious dimension, Tomic forfeited his rights under the Act.

DeMarco v. Holy Cross High School, *supra*, is a case just across the line from this one. The plaintiff in an age-discrimination suit, DeMarco was a math teacher at a Catholic school. He had minor religious duties—leading the students in prayers and taking them to Mass—but the court thought it unlikely that a trial of his age-discrimination claim would entail an examination of religious doctrine. The key passage in the court's opinion is the following: "the references to Holy Cross's religious mission are linked to two very specific allegations: that DeMarco failed to attend Mass and to lead his students in prayers. Given that the religious duties that DeMarco allegedly failed to carry out are easily isolated and defined, we are confident that the able district judge will be able to focus the trial upon whether DeMarco was fired because of his age or because of failure to perform religious duties, and that this can be done without putting into issue the validity or truthfulness of Catholic religious teaching." 4 F.3d at 172. DeMarco either did or did not lead

his students in prayer and attend mass. These were simple questions of fact, no different from whether he correctly added 2 plus 2, and could be answered without reference to church doctrine. That is not true with respect to the wisdom or propriety of Tomic's choice of music to play at an Easter Mass.

The court in *DeMarco* distinguished the Supreme Court's decision in *Catholic Bishop* on the ground that the National Labor Relations Act imposes more comprehensive duties on employers than the age-discrimination law. 4 F.3d at 169. Fair enough; but *DeMarco* also distinguished cases in which the employee is a member of the clergy, *id.* at 171-72; and the music director of a Catholic church and diocese is more like a clergyman than a math teacher. Also distinguishable is *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303-06 (1985), a replay of *Catholic Bishop* except that in *Alamo* the employees were not parochial-school teachers but instead the employees of commercial enterprises owned by the church. The Court could not see how even the regulation of the enterprises' labor practices by the Fair Labor Standards Act could inject a reviewing court into a religious dispute.

But we must consider whether it makes a difference that the diocese represents itself to be an "equal opportunity" employer, specifically with respect to age. Tomic argues that this representation in the employee handbook, though it disclaims creating a contractual obligation, should estop the diocese to deny that it is subject to the age-discrimination law. Now it is very unlikely that the representation should be interpreted to embrace religious functionaries, such as the music director. Among the forms of discrimination that the handbook forbids is discrimination on grounds of sex, though women of course cannot be Catholic priests. But in any event the ministerial exception, like the rest of the internal-affairs doctrine, is not subject to waiver or estoppel. *Minker v. Baltimore Annual Conference of United Methodist Church*, *supra*, 894 F.2d at 1356-57. A federal court will not allow itself to get dragged into a reli-

gious controversy even if a religious organization wants it dragged in. There is an analogy to the refusal of the courts to honor certain choice of law provisions in contracts. Generally, such a provision is honored. If a contract between citizens of Illinois specifies that the law of New York shall govern any dispute arising from the contract, a court in Illinois will apply that law. But as we said in *Lloyd v. Loeffler*, 694 F.2d 489, 495 (7th Cir. 1982), if the parties stipulated that their dispute would be governed by the Code of Hammurabi the court would refuse to honor the stipulation. Judges have an interest independent of party preference for not being asked to decide an issue that they cannot resolve intelligently. Americans would, moreover, be deeply offended at the thought of their secular courts taking on the additional role of religious courts, as if the United States were a theocracy.

After the oral argument in this case, the Second Circuit held (over dissent) that the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq.* (which in the wake of *City of Boerne v. Flores*, 521 U.S. 507 (1997), is limited to federal action, *O'Bryan v. Bureau of Prisons*, 349 F.3d 399, 401 (7th Cir. 2003)) amended the ADEA to wipe out the ministerial exception and substitute RFRA's standard, which requires deciding whether a particular law imposes a substantial burden on religious activity. *Hankins v. Lyght*, 438 F.3d 163, 169 (2d Cir. 2006). The decision would if sound invalidate the many decisions in this and other circuits recognizing the ministerial exception to federal employment discrimination law. The decision is unsound. RFRA is applicable only to suits to which the government is a party. See 42 U.S.C. §§ 2000bb-l(b), (c); *Worldwide Church of God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110, 1120-21 (9th Cir. 2000); *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 834-35 (9th Cir. 1999). "A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000bb-l(c).

It is hardly to be imagined, moreover, that in seeking to broaden the protection of religious rights, Congress, dropping nary a hint, wiped out a long-established doctrine that gives greater protection to religious autonomy than RFRA does. Indeed a serious constitutional issue would be presented if Congress by stripping away the ministerial exception required federal courts to decide religious questions. The exception is based on the establishment and free-exercise clauses of the First Amendment, see, e.g., *Combs v. Central Texas Annual Conference of United Methodist Church*, *supra*, 173 F.3d at 350; *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985), which place tight limits on governmental authority to regulate religion. In the *Catholic Bishop* case, the majority adopted a strained interpretation of the National Labor Relations Act in order to avoid confronting this constitutional issue. The dissent thought the strain too great, but did not deny the existence of such an issue, or intimate a view on how it should be resolved. 440 U.S. at 517-18.

It is no surprise that the appellant in *Hankins* did not even argue RFRA; nor does Tomic.

AFFIRMED.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

Case No. 04-1184

RICHARD TOMIC,
Plaintiff,

v.

CATHOLIC DIOCESE OF PEORIA,
a Religious Corporation
Defendant.

[STAMP: E-FILED
Wednesday, 17 November, 2004 01:24:32 PM
Clerk, U.S. District Court, ILCD]

ORDER

This matter is now before the Court on Defendant's Motion to Dismiss. For the reasons set forth below, the Motion [#4] is GRANTED.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the claims asserted arise pursuant to Title VII, 42 U.S.C. 2000e, and the Age Discrimination in Employment Act of 1967 (the "ADEA"), 29 U.S.C. § 621.

BACKGROUND[1]

Plaintiff, Richard Tomic ("Tomic"), was hired by Defendant, Catholic Diocese of Peoria (the "Diocese"), in March 1996 as the Director of Music and Organist for St. Mary's Cathedral. In July 1998, he assumed the additional role of the Director of Music and Organist for the Diocese. Tomic held both of these positions until his discharge on March 25, 2003.

From March 20, 2003, through March 25, 2003, Tomic had several discussions with the Bishop's assistant, Rev. Jason Gray regarding the scheduling of choir practices and music for the coming Holy Week and Easter. Tomic was concerned that the scheduling proposed by Rev. Gray would have a detrimental effect on the music scheduled for Easter week. During these discussions, Tomic was informed that the Diocese was hiring a new organist and choir director to "assist" him. On March 25, 2003, Tomic was abruptly terminated with no warning or opportunity to appeal and was never given a reason for his termination. At that time, he was 52 years old.

On June 11, 2004, Tomic commenced this litigation. In his Complaint, he makes essentially three claims: (1) he was the victim of unlawful age discrimination in violation of the ADEA and Title VII; (2) the Diocese breached the covenant of good faith and fair dealing implicit in his employment contract; and (3) employees of the Diocese are guilty of slander per se because they have made false statements that have interfered with his business or profession.

Defendant has now moved to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Tomic has filed his response, and this Order follows.

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[1] Unless otherwise noted, the background is taken from allegations in Plaintiff's Complaint and presumed to be true for purposes of resolving this Motion.

DISCUSSION

A complaint should not be dismissed unless it appears from the pleadings that the plaintiff could prove no set of facts in support of his claim which would entitle her to relief. See *Conley v. Gibson*, 355 U.S. 41 (1957); *Gould v. Artisoft, Inc.*, 1 F.3d 544, 548 (7th Cir. 1993). Rather, a complaint should be construed broadly and liberally in conformity with the mandate in Federal Rules of Civil Procedure 8(f).

For purposes of a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff; its well-pleaded factual allegations are taken as true, and all reasonably-drawn inferences are drawn in favor of the plaintiff. See *Albright v. Oliver*, 510 U.S. 266, 268 (1994); *Hishon v. King & Spalding*, 467 U.S. 69 (1984); *Lanigan v. Village of East Hazel Crest*, 110 F.3d 467 (7th Cir. 1997); *M.C.M. Partners, Inc. v. Andrews-Bartlett & Assoc., Inc.* 62 F.3d 967, 969 (7th Cir. 1995); *Early v. Bankers Life & Cas. Co.*, 959 F.2d 75 (7th Cir. 1992).

I. *Subject Matter Jurisdiction*

The Diocese first argues that the Complaint should be dismissed because the First Amendment precludes civil actions that arise out of ecclesiastical controversies. Specifically, the Diocese contends that issues involving internal church governance, including ecclesiastical matters, religious beliefs, and church doctrine, are beyond a secular court's scope of review. In support of this argument, the Diocese relies on *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994), and *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003).

In *Alicea-Hernandez*, the Seventh Circuit discussed the formation and evolution of what has come to be known as "the ministerial exception," which holds that in the context of Title VII claims brought against a church by its ministers, the "balance weighs in favor of free exercise of religion" and against the application of Title VII. 320 F.3d at 702-03, citing *McClure v. The Salvation Army*, 460 F.2d 553, 560 (5th

Cir. 1972); *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985).

> [T]he ministerial exception to Title VII is robust where it applies . . . . The exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision. The church need not, for example, proffer any religious justification for its decision, for the Free Exercise Clause "protects the act of a decision rather than a motivation behind it."

EEOC v. Roman Catholic Diocese of Raleigh, North Carolina, 213 F.3d 795, 802 (4th Cir. 2000). The Court of Appeals then indicated that "in determining whether an employee is considered a minister for purposes of applying this exception, we do not look to ordination but instead to the function of the position." *Alicea-Hernandez*. 320 F.3d at 703, *citing Young*, 21 F.3d at 186; *Roman Catholic Diocese*, 213 F.3d at 801. A communications manager who was a liaison between the church and the community to whom it directed its message was determined to serve a ministerial function for the church, and the Seventh Circuit found that the dismissal of her Title VII claims for lack of subject matter jurisdiction was appropriate. *Alicea-Hernandez*, 320 F.3d at 704.

In *Roman Catholic Diocese*, which was relied on by the Seventh Circuit in *Alicea-Hernandez*, the Fourth Circuit addressed the specific question of whether a director of music ministry and part-time music teacher at the affiliated elementary school was a ministerial employee. The court affirmed the dismissal of the employee's Title VII claims because her duties primarily "consisted of the selection, presentation, and teaching of music, which is integral to the spiritual and pastoral mission of the Catholic Church and many other religious traditions." 213 F.3d at 797. In so holding, the Fourth Circuit articulated the general rule that "if the employee's primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered clergy." *Id.*

at 801. The Fifth Circuit reached a similar conclusion in *Starkman v. Evans*, 198 F.3d 173, 175-76 (5th Cir. 1997), when it determined that the ministerial exception should be extended to a lay choirmaster and director of music as "religious music plays a highly important role in the spiritual mission of the church," and the job required the plaintiff to perform ministerial functions warranting First Amendment protection.

Here, Tomic held the positions of Director of Music and Organist for the Diocese and Director of Music and Organist for St. Mary's Cathedral. As indicated by the job description for these positions, the goal of the position was to "assist the Office of Divine Worship in preparing and celebrating various diocesan liturgies." Performance responsibilities included: assisting in preparing materials, practicing and playing music before, during, and after the Masses and liturgies, recruiting and training choir members and cantors, and conducting weekly rehearsals for choirs and cantors.

Tomic attempts to distinguish himself from the communications director in *Alicea-Hernandez*, arguing that none of these duties involved ministerial acts and that any involvement that he had with the public or congregation was incidental. However, by focusing solely on the public relations or "message dissemination" aspect of the position analyzed in that case, he has restricted the contours of the ministerial exception in a manner not supported by case law.

As the Fourth Circuit noted in *Roman Catholic Diocese*:

> At the heart of this case is the undeniable fact that music is a vital means of expressing and celebrating those beliefs which a religious community holds most sacred. Music is an integral part of many different religious traditions. It serves a unique function in worship by virtue of its capacity to uplift the spirit and manifest the relationship between the individual or congregation and the Almighty.... Thus, inasmuch as [the plaintiff's] duties involve the expression of the church's musical tradition, it is a

> fallacy to denominate them as merely secular. We refuse to demote music below other liturgical forms or to sever it from its spiritual moorings. We cannot say, for example, that the reading of scripture or the reciting of prayers is any more integral to religious worship than the singing of hymns or the intonation of chants. Whether spoken or sung, psalms lift eyes unto the hills. It is not for us to place the oratorios of Handel, the cantatas of Bach, or the simplest of hymns beneath the reading of the sacred text from which they draw.... The efforts of a music minister or teacher can thus influence the spiritual and pastoral mission of the church as much as one who would lead the congregation in prayer, preach from the pulpit, or teach theology in school.

213 F.3d at 802-03. Like the choir directors/music directors in *Roman Catholic Diocese* and *Starkman*, Tomic was clearly a pivotal figure in musical life in the Diocese and at St. Mary's. He was responsible for assisting in the preparation and celebration of liturgies, assisting the parish secretary in the preparation of liturgical aids, recruiting, rehearsing and conducting the choirs, and recruiting and training cantors, "functions at the very heart of the church's musical life." *Id.* at 803. Given these realities, Tomic's attempt to distinguish himself from the plaintiffs in *Roman Catholic Diocese* and *Starkman* is unavailing.

The Court therefore concludes that Tomic's duties and functions in his positions as Director of Music and Organist were integral to the spiritual and pastoral mission of the Diocese, thereby falling within the contours of the ministerial exception. As such, his claims attacking the reasonableness of the Diocese's personnel decision with respect to his employment status and the circumstances of his discharge involve ecclesiastical decisions that are placed beyond the subject matter jurisdiction of the Court by the Free Exercise Clause of the First Amendment. The Diocese's Motion to Dismiss must therefore be granted in this respect.

To the extent that it could be determined that the ministerial exception does not apply to Tomic's claims for breach of contract or defamation, the Court declines to exercise supplemental jurisdiction over these pendent state-law claims pursuant to 28 U.S.C. § 1367. *Wright v. Associated Ins. Co. Inc.*, 29 F.3d 1244, 1250 (7th Cir. 1994), *citing* 28 U.S.C. § 1367(c)(3). Having determined that Tomic's Title VII and ADEA claims cannot proceed in federal court, no federal claims remain, and there can be no question that the remaining state claims predominate. After weighing the relevant factors of judicial economy, convenience, fairness, and comity, the Court finds that the balance weighs in favor of declining to exercise supplemental jurisdiction and dismisses the claims in Counts II and III without prejudice to their being refiled in state court.

CONCLUSION

For the reasons set forth above, Defendant's Motion to Dismiss [#4] is GRANTED. This matter is now TERMINATED.

ENTERED this 16th day of November, 2004.

s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

RICHARD TOMIC,

Plaintiff,

v.

CATHOLIC DIOCESE OF PEORIA,
a Religious Corporation,

Defendant.

Case No. 04-1184

[STAMP: FILED June 11, 2004]

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff RICHARD TOMIC alleges as his Complaint against CATHOLIC DIOCESE OF PEORIA, a Religious Corporation (the "Diocese") as follows:

INTRODUCTION

1. This is an action against CATHOLIC DIOCESE OF PEORIA, a Religious Corporation, for its wrongful discharge of Richard Tomic in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621, et seq. (the "ADEA") and 42 U.S.C. §2000e ("Title VII") when it wrongfully discharged RICHARD TOMIC in violation of federal law. Additionally, plaintiff is seeking damages for breach of contract and defamation.

PARTIES

2. Plaintiff RICHARD TOMIC is a resident of Peoria, Illinois.

3. Defendant CATHOLIC DIOCESE OF PEORIA. is a Religions Corporation with its principal place of business

in Peoria, Illinois; it has, on information and belief, in excess of fifty (50) employees.

JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 28 USCA §1331. Plaintiff's cause of action arises under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621, et seq. (the "ADEA") and 42 U.S.C. §2000e ("Title VII"). Additionally, jurisdiction over the state law claims is proper pursuant to 28 U.S.C. 1367.

5. On May 7, 2004, the U.S. Equal Employment Opportunity Commission ("EEOC") issued to plaintiff a Notice of Right to Sue defendant in the United States District Court. A copy of the Notice of Right to Sue is attached as Exhibit A. Plaintiff has filed suit within 90 days of his receipt of the Notice of Right to Sue.

6. Venue is proper pursuant to 28 USCA §1391(a). This is the judicial district where a substantial part of the events or omissions giving rise to the claim occurred.

BACKGROUND

7. Plaintiff was hired by defendant as the Director of Music and Organist at St. Mary's Cathedral in March of 1996. Plaintiff became a full time employee of the Diocese in or around July ~~of 1998,~~ when he assumed the additional role of Director of Music and Organist for the Catholic Diocese of Peoria, and remained employed in that dual capacity until the date of his wrongful termination on March 25, 2003.

8. Until the date of his wrongful termination, plaintiff performed his duties in an exemplary manner.

9. During the period between March 20, 2003 and March 25, 2003, plaintiff had several discussions with the Bishop's assistant, Rev. Jason Gray. The first of these discussions on March 20, 2003 concerned the scheduling of choir practices and music for the coming Holy Week and Easter. Plaintiff had expressed his concerns to Rev. Gray that the scheduling he (Gray) was requesting would have a detrimental effect on the music scheduled for Easter week. These

discussions culminated in plaintiff's termination on March 25, 2003. During the course of these discussions, it was revealed to plaintiff that the Diocese was hiring a new organist and choir director "to assist" plaintiff. Plaintiff was abruptly terminated on March 25, 2003. Plaintiff was given no warning, no opportunity to appeal this termination, no hearing or due process of any kind, and never given a reason for his termination. In fact, while contesting plaintiff's application for unemployment compensation, the Diocese first took the position that plaintiff left his job voluntarily and later took the position that he was terminated for misconduct. Each of these assertions is untrue.

10. Plaintiff is 52 years old. Upon termination, plaintiff was promptly replaced by a much younger individual, age approximately 30, picked by Bishop Jenky. Plaintiff is informed and believes and thereon alleges that the termination for "misconduct" was pretextual, and was part of a decision to replace plaintiff with a younger individual.

11. As a result of his wrongful termination, plaintiff has suffered great harm, including the loss of reputation and the loss of income as well as the loss of medical and related insurance and personal benefits.

12. Defendant's actions constitute an unlawful termination, in violation of the provisions of the ADEA and Title VII.

FIRST COUNT FOR AGE DISCRIMINATION

13. Plaintiff incorporates by reference the allegations of paragraphs 1 through 12 of this Complaint as though set forth in full at this point.

14. The acts alleged herein violate provisions of the ADEA and Title VII prohibiting discrimination against an employee because of his age. Plaintiff is informed and believes, and thereon alleges, that defendant undertook an intentional and malicious campaign to eliminate him from the pool of defendant's employees and to replace him with a younger employee.

15. Defendant engaged in its discriminatory practices with malice and with reckless indifference to the federally protected rights of plaintiff. Plaintiff is therefore entitled to an award of punitive damages to the maximum extent permitted by law.

SECOND COUNT FOR BREACH OF CONTRACT

16. Plaintiff incorporates by reference the allegations of paragraphs 1 through 15 of this Complaint as though set forth in full at this point.

17. Plaintiff was employed pursuant to written agreements signed with defendant. True and correct copies of the agreements are attached hereto as Exhibit B and incorporated by reference at this point.

18. As a result of the employment relationship which existed between plaintiff and defendant employer, the expressed and implied promises made in connection with that relationship, and the acts, conduct, and communications resulting in these implied promises, defendant employer promised to act in good faith toward and deal fairly with plaintiff. This requires, among other things, that: (a) each party in the relationship must act with good faith toward the other concerning all matters related to the employment; (b) each party in the relationship must act with fairness toward the other concerning all matters related to the employment; (c) neither party would take any action to unfairly prevent the other from obtaining the benefits of the employment relationship; (d) defendant employer would similarly treat employees who are similarly situated; (e) defendant employer would comply with its own representations, rules, policies, and procedures in dealing with plaintiff; (f) defendant employer would not terminate plaintiff without a fair and honest cause, regulated by good faith on defendant employer's part; (g) defendant employer would not terminate plaintiff in an unfair manner; and (h) defendant employer would give plaintiff's interests as much consideration as it gave its own interests.

19. Defendant employer's termination of plaintiff was wrongful, in bad faith, and unfair, and therefore a violation of defendant employer's legal duties. Plaintiff further alleges that defendant employer breached the covenant of good faith and fair dealing when it:

(a). refused to abide by its own policies when dealing with plaintiff;

(b). denied the existence of the contract and the agreements made with plaintiff;

(c). attempted to unfairly prevent plaintiff from obtaining the benefits of his employment relationship;

(e). terminated plaintiff's employment for expressing legitimate concerns about scheduling difficulties;

(f). terminated plaintiff's employment for false reasons and in a manner that was inconsistent with defendant employer's stated policies and practices.

20. Defendant employer's breach of the covenant of good faith and fair dealing was a substantial factor in causing damage and injury to plaintiff. As a direct and proximate result of defendant employer's unlawful conduct alleged in this complaint, plaintiff has lost substantial employment benefits with defendant employer, including loss of reputation, lost wages, and other employee fringe benefits, the precise amount of which will be proven at trial.

THIRD COUNT FOR DEFAMATION PER SE

21. Plaintiff incorporates by reference paragraphs 1 through 20 of his Complaint as though fully set forth at this point.

22. Plaintiff RICHARD TOMIC is a professional who has dedicated many years to developing his professional reputation as a church music director and organist.

23. Since his termination, Diocese employees, including Rev. Gray and Rev. Joseph Donton, the Cathedral Rector, have undertaken a continuous campaign of false and defamatory statements, sometimes in public gatherings, maligning

plaintiff's professional integrity. Instances include the following:

a. On or around March 30, 2003, Rev. Joseph Donton announced to his congregation, from the pulpit, that Mr. Tomic had "turned in his keys" so they would not have any music during the remainder of the Lenten Season.

b. During the period between March 25, 2003, and January 1, 2004, Rev. Gray told several individuals, including Susan Budde, a choir director in Moline, that plaintiff had walked off of his job two weeks before Easter, that he had "trashed" the office computer, and that he was a "private" person who had trouble with change.

24. These false allegations have spread throughout the church music community, and have come to plaintiff's attention from sources in Moline, Champaign, Rantoul, Galesburg and, of course, Peoria.

25. The net effect of these false and defamatory statements is that plaintiff has had great difficulty in securing a position elsewhere.

26. As a result of the false and defamatory statements, those who heard them were all given the idea that plaintiff was unprofessional, unstable, and untrustworthy.

27. Such defamatory statements made by the Defendant constitute *slander per se* as they were allegations which were concerned with, interfered with, and affected plaintiff's business and profession.

28. As a result of the false and defamatory statements made by the defendant, plaintiff has been seriously injured and suffered damages in an amount to be determined at time of trial.

29. These statements by Rev. Gray and Rev. Donton were made in the course and scope of their employment by, and relationship with, defendant, and were made with its explicit assent and approval. Defendant, by its conduct, prior to and following the defamatory publications, assented to and encouraged the publication of the defamatory statements.

30. Defendant has acted willfully, maliciously and oppressively, without regard to plaintiff, therefore entitling plaintiff to an award of punitive damages in an amount to be determined at the time of trial.

PRAYER

WHEREFORE it is requested that the Court grant the following relief:

AS TO COUNT ONE:

A. Declare the conduct of defendant to be a violation of federal law;

B. Award plaintiff compensatory damages sufficient to compensate him for his back wages, the loss of his benefits, prospective income and pension;

C. Grant plaintiff an award of punitive damages to the maximum extent permitted by law;

D. Award plaintiff his costs and reasonable attorneys' fees for the pursuit of this action;

E. Order such other relief as the court deems just.

AS TO COUNT TWO:

A. Award plaintiff compensatory damages as determined by proof at time of trial;

B. Order such other relief as the court deems just.

AS TO COUNT III:

A. Award plaintiff compensatory damages as determined by proof at time of trial;

B. Grant plaintiff an award of punitive damages to the maximum extent permitted by law;

C. Order such other relief as the court deems just.

Respectfully submitted,
JACKSON THOMAS LLP
By: /s/_____
Stephen J. Thomas
Attorney for Plaintiff

Dated: June 11, 2004

DEMAND FOR JURY TRIAL

Jury trial is demanded.

Respectfully submitted,
JACKSON THOMAS LLP
By: /s/
Stephen J. Thomas

Dated: June 11, 2004

Stephen J. Thomas
JACKSON THOMAS LLP
416 Main Street, Suite 717
Peoria, IL 61602
Phone: 309.637.8888
Fax: 309.637.8838

APPENDIX D

CATHOLIC DIOCESE OF PEORIA
OFFICE OF DIVINE WORSHIP
EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT between Richard J. Tomic and the Office of Divine Worship of the Catholic Diocese of Peoria is intended to set forth guidelines and procedure in connection with the particular employment position. Nothing contained in this Employment Agreement is intended, and should not be interpreted, to guarantee employment for any specific period of time. Employees of the Diocese of Peoria are employees at will. Circumstances may arise in which the Diocese of Peoria determines that changes are required in these guidelines and procedures. For this reason, The Diocese of Peoria reserves the right, at any time, to modify, rescind, or supplement any or all of the guidelines or procedures contained herein, and to take actions which may be contrary to a guideline or procedure set forth in this Agreement.

1. The Diocese will employ Richard J. Tomic part time in the position of Diocesan Music Director beginning July 1, 1999.

2. The duties will be stated in the attached job description and other such duties as are assigned from time to time by the Director of the Office of Divine Worship, the Vicar General/Moderator of the Curia or the Bishop.

3. Salary will be compensated in the following manner.

a. hourly office work will be compensated at $15.00 / hour [This includes rehearsal time with the group; personal rehearsal time is not compensated];

b. workshop direction will be compensated at $100.00 / hour;

c. participation or direction of diocesan liturgical events such as ordinations, Chrism Mass, Mass for

New Catholics, the Rite of Election, funerals of clergy will be compensated at $100.00 per event. Should the Diocesan Music Director play as well as direct, he will be compensated for both.

The payment of the salary and other remuneration is based upon actual hours worked.

4. Richard J. Tomic will be reimbursed for reasonable business expenses incurred on behalf of the Diocese, provided approval is received from the department head in advance.

5. During the life of this Agreement all revenues identified with the Office of Divine Worship shall be the exclusive property of the Diocese. It is specifically agreed and understood as follows:

a. The diocese shall receive and be vested in full ownership of all gifts and grants of money or other property to or for use with respect to the office from any source whatsoever;

b. The diocese shall receive and be vested in full ownership of all other revenues of the department.

6. In fulfilling the job description Richard J. Tomic agrees to accept the direction of the Director of the Office of Divine Worship, the Vicar General/Moderator of the Curia or the Bishop in the exercise of responsibilities.

7. Richard J. Tomic further agrees to become familiar with and abide by all policies as set forth in the Handbook of Personnel Policies for the Diocese of Peoria, including an annual review of the Sexual Abuse Policies of the Diocese of Peoria.

8. Upon leaving the position, for whatever reason, Richard J. Tomic agrees to return all materials, documents and notes concerning the position to the department head, including all copies and agrees to hold in confidence and never use or disclose to any third party any secret or confidential information of this position.

All intellectual or physical products produced by Richard J. Tomic in or for an office of the diocese with materials

provided by the diocese and supervision extended by the diocese are to be considered work for hire materials which belong to the diocese.

/s/ _____

Richard J. Tomic

/s/ _____

Barbara A. Logan

DIVINE WORSHIP
JOB DESCRIPTION
DIOCESAN MUSIC DIRECTOR

Position Goal: To assist the Office of Divine Worship in preparing and celebrating various diocesan liturgies. To prepare and present various workshops or resources as requested. To assist other diocesan entities, viz. parishes, religious communities, and/or diocesan offices in planning and celebrating liturgical events as requested.

Accountability: The music director is accountable to the Director of the Office of Divine Worship, or in her absence to the Vicar General.

Evaluation: An annual evaluation by the Director and/or Vicar General will be conducted.

Work parameters: The position calls for work to be completed as needed. Actual days and hours will remain flexible depending on deadlines and events. It is extremely important that the music director (or someone he delegates) be available for emergency situations, such as funerals, which call for shortened deadlines. Rehearsal will be scheduled with consultation of the pastor/office of the parish involved.

Performance Responsibilities (relating to):

1 Director of the Office of Divine Worship

—Collaborate with and coordinate all requests for participation at diocesan events

—Maintain records of resources and personnel

—Respond to correspondence and phone messages which deal with music

2 Resources

—Review resources available; make suggestions for additions

—Keep records of resources used in prior years

—Preview new releases or resources that would be useful to the Office

3 Programs / Workshops / Liturgical celebrations—

—Assist in preparing materials

—Organize logistics of presentations

—Contact additional personnel

—Keep records; present expenses to the Office

—Rehearse as needed with various personnel

—Be available the date of the event

—Follow-up with review and thank-you's

4. Liturgical Participation aids

—Assist in preparing booklets by submitting songs, materials etc. as requested

—Provide names of personnel involved

5. Finances

—Maintain accurate records of hours worked

—Submit payment for salary requests monthly or quarterly: checks are usually written on Wednesday each week

—Submit any requests for remuneration using above schedule

—Submit any bills related to Office expenses as soon as received

EMPLOYMENT AGREEMENT
DIOCESE OF PEORIA

CATHEDRAL OF ST. MARY

This EMPLOYMENT AGREEMENT between Richard J. Tomic and the Cathedral of St. Mary is intended to set forth guidelines and procedures in connection with the particular employment position. Nothing contained in this Agreement is intended, and should not be interpreted, to guarantee employment for any specific period of time. Employees of the Diocese of Peoria are employees at will. Circumstances may arise in which the Diocese of Peoria determines that changes are required in these guidelines and procedures. For this reason, the Diocese of Peoria reserves the right, at any time, to modify, rescind, or supplement any or all of the guidelines or procedures contained herein, and to take actions which may be contrary to a guideline or procedure set forth in the this Agreement.

1. The Cathedral of St. Mary will employ Richard J. Tomic in the position of Organist / Music Director beginning July 1, 1999.

2. The duties will be as stated in the attached job description and other duties as are requested from time to time by the Pastor / Rector and agreed to by the Organist / Music Director.

3. The salary will be based on an annual figure of Fifteen Thousand Two Hundred Ninety-two Dollars ($15,292) payable in twenty-four (24) equal installments on the 15th and last working day of each month.

4. The Cathedral of St. Mary agrees to provide the following employment benefits in accordance with the current terms and provisions of these plans as determined by the Handbook of Personnel Policies of the Diocese of Peoria and which may be amended from time to time; single medical insurance coverage paid through a joint agreement between

the Office of Divine Worship and the Cathedral, Equivest and unemployment compensation if applicable.

5. The Cathedral of St. Mary will grant paid time off for vacation, sick days and personal days in accordance with the eligibility under the terms set forth in the Handbook of Personnel Policies of the Diocese of Peoria. Effective with this Agreement, for this time period, Richard J. Tomic is eligible to accrue the following paid time off:

14 Days (2 weeks including 2 weekends) - Vacation Time

12 Days - Sick Time (for use only during actual illness or injury)

3 Days - Personal Time

6. Family medical leave will be available when necessary, upon completion of necessary requirements as set forth in the Family Medical Leave Policy for the Diocese of Peoria located in the Handbook of Personnel Policies of the Diocese of Peoria.

7. Richard J. Tomic agrees to fulfill all the responsibilities of the position. The hours of work shall conform as closely as possible to the regular parish office hours unless directed otherwise by the Pastor / Rector. These work hours may vary if the specific nature of the responsibilities requires other hours and the Pastor / Rector agrees to these hours.

8. In fulfilling the job description Richard J. Tomic agrees to accept the direction and supervision of the Pastor / Rector and the exercise of the responsibilities.

9. Richard J. Tomic further agrees to become familiar with and abide by all policies as set forth in the Handbook of Personnel Policies of the Diocese of Peoria, including an annual review of the Sexual Harassment and Abuse Policies of the Diocese of Peoria.

10. Richard J. Tomic will be reimbursed for reasonable business expenses incurred on behalf of the parish, provided approval is received from the Pastor / Rector in advance.

11. Upon leaving the position, for whatever reason, Richard J. Tomic agrees to return all equipment, materials, documents and notes concerning the position to the Pastor / Rector, including all copies and agrees to hold in confidence and never use or disclose to any third party any secret or confidential information of this parish.

Any public act or the publication of any act not consistent with the religious and moral teachings of the Catholic Church will be sufficient cause for discharge. Other causes for termination (although the list is not all-inclusive) are listed in the Handbook of Personnel Policies of the Diocese of Peoria.

AGREED TO AND ACCEPTED:

/s/_____	7-1-99
EMPLOYEE	DATE
/s/_____	7-1-99
PASTOR/RECTOR	DATE

NOTE: This Agreement is to be filled out/signed in triplicate:

- one copy for Rector / Pastor;
- one copy for Employee;
- one copy for Employee's personnel file.

ADDENDUM

1. The Organist / Music Director shall receive a fee of $125.00 for all weddings at the Cathedral;

2. The Organist / Music Director shall receive a stipend of $75 for all funerals at the Cathedral;

3. The Organist / Music Director will be reimbursed for all expenses including fees, travel, lodging and meals for one professional conference/convention per year.

4. The Organist / Music Director is entitled to membership in professional organizations related to their position as Organist / Music Director with the approval of the Rector / Pastor. Application fees and membership dues will be paid by the Cathedral.

5. The Organist / Music Director has the option of using the piano/organ for lessons taught at the Cathedral.

AGREED TO AND ACCEPTED:

/s/	7-1-99
EMPLOYEE	DATE
/s/	7-1-99
PASTOR/RECTOR	DATE

ORGANIST / MUSIC DIRECTOR
Job Description

ORGANIST / ACCOMPANIST

1. Practice Cathedral-scale organ literature to be played before, during, and after the Masses and liturgies described below;

2. Play for all weekend parish Masses at the Cathedral—Saturday (5:30 p.m.) and Sunday (10:30 a.m.)

3. Play for all special parish Masses—Christmas Eve (5:30 p.m., 10:30 p.m.), Christmas Day (10:30 a.m.), Ash Wednesday, Sacred Triddum (Holy Thursday, Good Friday, Easter Vigil), Easter Sunday (10:30 a.m.), Holy days;

4. Play for all weddings and funerals at the Cathedral (See Employee Agreement Addendum);

5. Play for all Diocesan Events at the Cathedral in accord with the Office of Divine Worship Employee Agreement.

6. Secure substitutes when needed.

MUSIC DIRECTOR

1. Prepare music for all parish Masses and liturgies described above in consultation with the Rector / Pastor when necessary;

2. Recruit and train choir members and cantors;

3. Conduct weekly choir/cantor rehearsals;

4. Prepare the *cantor* for all *Saturday and Holy Day Masses* at the Cathedral;

5. Prepare the *choir* for all *Sunday and Special Masses* at the Cathedral;

6. Prepare all liturgical aids in cooperation with the parish secretary;

7. Secure substitutes or instrumentalists and additional vocalists when needed.

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I. GENERAL INFORMATION

A. Equal Opportunity Employer

The Diocese of Peoria is an Equal Opportunity Employer, and candidates for employment shall be considered on the basis of their qualifications, without regard to race, color, sex, age, physical handicap, national origin, or ancestry, although preference is generally given to persons of the Roman Catholic faith.

Candidates are responsible for making available to the Diocese facts about themselves with regard to education, training and experience as well as individual interests.

The Diocese may consider an applicant or employee's marital status, if said status is against the teachings of the Church.

All employees, regardless of religious denomination, shall conform to the moral standards of the Catholic faith.

B. Sexual Harassment or Other Forms of Harassment

It is the policy of the Diocese of Peoria to maintain a work environment free of unlawful discrimination for all employees. Sexual harassment and other forms of harassment are unacceptable conduct which violates this policy. A Harassment Policy for the Diocese of Peoria is included in Section VIII—Article C of this Policy Book.

C. Religious Employees

Religious working in the diocesan offices will be governed by the policies herein contained, except in cases in which there is a conflict between these policies and the obligation of their state in life. Such conflicts should be settled with the Vicar General/Moderator of the Curia or the Bishop.

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The First Amendment to United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]

2. The Age Discrimination in Employment Act, 29 U.S.C. § 623, provides, in pertinent part:

(a) Employer practices

It shall be unlawful for an employer—

> **(1)** to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age[.]

3. The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, provides, in pertinent part:

§ 2000bb-1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

§ 2000bb-2. Definitions

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means religious exercise, as defined in section 2000cc-5 of this title.

§ 2000bb-3. Applicability

(a) In general

This chapter applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993 is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

§ 2000bb-4. Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.